

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 05.08.2014

+ **W.P.(C) 8036/2013 & CM No.16991/2013**

BSES RAJDHANI POWER LIMITED

..... Petitioner

versus

**SUB DIVISIONAL MAGISTRATE
(SARITA VIHAR) & ANR**

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Sunil Fernandes, Standing counsel with
Mr Deepak Pathak and Mr Raghav Chadha,
Mr Manish Garg and Mr Akshay Bhardwaj.
For the Respondents : Ms Zubeda Begum, Standing Counsel with
Ms Sana Ansari and Mr I. Javed.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

1. The petitioner has filed the present writ petition, *inter alia*, making the following prayers:-

“a) Issue writ/order/direction in the nature of Mandamus/certiorari and other order of the like nature, Quashing/Setting aside the impugned order dated 19.11.2013 (received on 29.11.2013) issued by Respondent No.1 and all other proceedings and actions taken or proposed to be taken by the Respondent no.1 or any other person or body claiming by or through it;

b) Issue writ/order/direction in the nature of Mandamus/certiorari or other order of the like nature to the Respondent no.1 to take the requisite action to regularize the

Collection cum Bill Collection Centre at Badarpur, Mathura Road, New Delhi and;

c) Alternatively, Issue writ/order/direction in the nature of Mandamus/certiorari or other order of the like nature to the Respondent no.2 to allot alternate plot/place for shifting the said complaint centre and”

2. The petitioner is aggrieved by an order dated 19.11.2013 (hereinafter referred to as the ‘impugned order’) passed by respondent no.1, whereby the petitioner was directed to remove the building situated at Badarpur, Mathura Road, New Delhi as being unauthorised, illegal and an encroachment on a public road - old Mathura Road. The said building houses the complaint-cum-bill collection centre of the petitioner.

3. The petitioner states that the assets belonging to the unbundled Delhi Vidyut Board (DVB) within the licence area of the petitioner (i.e. South and South-West Delhi) stood transferred to the petitioner for its use in terms of the Delhi Electricity Reforms (Transfer Scheme) Rules, 2001. The building in question was also one of the assets which was being used by the erstwhile DVB on the date of the transfer and, therefore, the petitioner was vested with the building in question “on right to use basis” along with other assets of the erstwhile DVB. The ownership of the said building and the land continued to vest with the Government of NCT of Delhi and the petitioner being a licensee for distribution of electricity was granted the right to use the same.

4. The learned counsel for the petitioner further contended that around one million consumers are being serviced from the building in question and it would not be in public interest to demolish the same without providing

the petitioner with an alternate land or building. The petitioner further contends that the demarcation report was not supplied to the petitioner. It is contended that the structure in question was built over three decades ago and it must be presumed that the same was in accordance with law.

5. The principal controversy involved in the present petition is whether the building in question which is currently occupied by the petitioner is unauthorised and encroaches upon a public road at village Badarpur, New Delhi. And, whether the petitioner has a right to regularisation of the said building or in the alternative to be provided an alternative site.

6. The learned counsel for the respondent has pointed out that a complaint had been made before the Lokayukta, Delhi alleging that there were encroachments on the old Mathura Road at village Badarpur and that the respondents were not taking any action for removing the same. Subsequently, an exercise of demarcation was carried out which confirmed that there were encroachments on both sides of the road in question. Show cause notices were issued to the encroachers calling upon them to show cause why demolition action not be taken with respect to the buildings encroaching upon the said public road. Since the complaint-cum-bill collection centre occupied by the petitioner was also found to be an encroachment on the road, a show cause notice dated 08.02.2012 was issued to the petitioner. Subsequently, another show cause notice dated 23.11.2012 was also issued to the petitioner.

7. Thereafter, the petitioner filed a writ petition being W.P.(C) 7737/2012, inter alia, praying for quashing of the show cause notice dated

23.11.2012. The said writ petition was disposed of by this Court by an order dated 12.12.2012, directing respondent no.1 to adjudicate the show cause and pass a speaking order. Pursuant to the said direction, the petitioner made a representation dated 01.02.2013 to respondent no.1. Respondent no.1 considered the said representation of the petitioner and by an order dated 19.11.2013, respondent no.1 held that the building in question was, indisputably, an encroachment on the old Mathura Road as the demarcation report had not been challenged. Accordingly, respondent no.1 directed removal of the unauthorised illegal structures from the said public road. The said order dated 19.11.2013 is subject matter of the present petition and the relevant extract of the impugned order is quoted below:-

“The demarcation report dt. 06.02.2012 has not been challenged before any competent court, forum or authority and the same has attained finality in all respect and now it is undisputed fact that the public road has been encroached upon and unlawful obstruction has been created by the said encroachers/respondents and the smooth use of a right to way for general public is being denied by them. Therefore, such illegal obstructions are needed to be removed by demolishing the said illegal structures, shops, buildings etc. in question from the part of public road....”

8. There is no material placed in the present petition which would indicate that respondent's finding that the building in question is an encroachment on old Mathura Road is erroneous. The fact that the building was constructed several years ago or was being used by erstwhile DVB would not in any manner belie the conclusion that the building in question was encroaching upon the public road or that the demarcation report was

erroneous. The fact that the petitioner came into occupation of the building in question by virtue of a transfer from the erstwhile DVB, also does not carry the case of the petitioner any further. In the event, the building in question was an encroachment, the same would be liable to be removed irrespective of whether the building was occupied by DVB or the petitioner and the same would not be material in deciding the question whether, in fact, the building in question was an encroachment. The petitioner, in any event, cannot claim a better title than that of the erstwhile DVB.

9. Undoubtedly, the petitioner is a public utility and the demolition of the building in question is liable to adversely affect its functioning and probably the consumers, nonetheless, the same would not entitle the petitioner to continue with the encroachment.

10. I am also unable to accept that the petitioner has any right to have the building in question regularized. The learned counsel for the petitioner could not advert to any statute or principle of law which would entitle an building encroaching on a public road to be regularised. There is also no provision or principle in law which would entitle a person occupying a building on encroached land for an alternative site. The prayers made by the petitioner, thus, cannot be granted.

11. The learned counsel for the parties stated that the petitioner has already filed an appeal before the Deputy Commissioner under Section 64 of the Delhi Land Revenue Act, 1954, impugning the demarcation carried out on 06.02.2012. The learned counsel for the parties further state that efforts are being made to provide an alternate site to the petitioner. It

would, of course, be expedient, if an alternate site is made available to the petitioner expeditiously as the same would provide a ready solution to the controversy.

12. In the given circumstances and considering that the petitioner has already challenged the demarcation report, the present petition and the pending application are dismissed, albeit with the direction that appeal filed by the petitioner before the Deputy Commissioner be disposed of expeditiously and in any event within a period of six weeks. In the meanwhile, the respondent no.1 shall refrain from demolishing the building in question.

AUGUST 05, 2014
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VIBHU BAKHRU, J

